

House Amendment 1584

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1 1 Amend House File 700 as follows:
1 2 #1. Page 51, by inserting after line 11 the
1 3 following:
1 4
1 5 Sec. 201. PURPOSE AND DEFINITIONS.
1 6 1. PURPOSE. The general assembly finds that the
1 7 Iowa communications network is a valuable state asset
1 8 that has served the people of the state well, but
1 9 which requires significant ongoing financial support
1 10 from the state in the form of annual appropriations.
1 11 The operation of a telecommunications network is a
1 12 function that can be and generally is conducted by
1 13 private enterprise. It is in the public interest to
1 14 sell the Iowa communications network to a qualified
1 15 private business enterprise that will commit to
1 16 provide the same secure low-cost high-quality service
1 17 to state and federal agencies and military
1 18 installations now provided by the network. Through
1 19 such a sale, the state would eliminate the need for
1 20 ongoing annual appropriations while preserving the key
1 21 benefits enjoyed by the state under the present state
1 22 ownership of the network. The state also expects to
1 23 obtain sufficient proceeds from such a sale to cover
1 24 existing obligations and to realize additional
1 25 proceeds above the level of such obligations. Given
1 26 the current depressed state of the telecommunications
1 27 industry, the state can reasonably be expected to
1 28 maximize sales proceeds by allowing a purchaser a
1 29 period of time in which to assemble financing for its
1 30 purchase. During the interim between enactment of
1 31 this division of this Act and completion of a sale,
1 32 the services of a private-enterprise manager with
1 33 experience operating telecommunications networks can
1 34 reasonably be expected to reduce the costs of
1 35 operating the Iowa communications network, thereby
1 36 lowering or possibly eliminating annual
1 37 appropriations.
1 38 2. DEFINITIONS. As used in this division of this
1 39 Act, unless the context otherwise requires:
1 40 a. "Board" means the state network privatization
1 41 board.
1 42 b. "Commission" means the Iowa telecommunications
1 43 and technology commission established in section 8D.3
1 44 to oversee the operations of the network.
1 45 c. "Management contract" means an agreement
1 46 between the board and the manager for services to
1 47 oversee and operate the network on behalf of the
1 48 state.
1 49 d. "Manager" means the private entity selected by
1 50 the board to oversee and operate the network on behalf
2 1 of the state.
2 2 e. "Network" means the Iowa or state
2 3 communications network as defined in section 8D.2.
2 4 f. "Out-of-pocket expenses" means moneys paid to
2 5 an unaffiliated third party for engineering, legal,
2 6 consulting, or other services or goods by a manager or
2 7 purchaser.
2 8 g. "Purchaser" means the entity that is selected
2 9 by the board to purchase the network from the state.
2 10 h. "Required third-party approval" means any
2 11 consent, conveyance, approval, or waiver that must be
2 12 granted by a private, governmental, or quasi-
2 13 governmental third party in order for the purchaser to
2 14 receive clear title to all network assets and the
2 15 right to use the network assets free of adverse
2 16 claims. Required third-party approvals include but
2 17 are not limited to all of the following:
2 18 (1) Approvals of assignments to the purchaser of
2 19 the state's rights under leases or contracts between
2 20 the state and the third party.
2 21 (2) Conveyance to the purchaser of property that
2 22 the third party currently leases to the state on a
2 23 term with less than fifteen years remaining.
2 24 (3) Release of restrictions in contracts that

require that the state operate the network.

i. "Sales contract" means the contract between the state as seller, represented by the board, and the purchaser, for sale of the network to the purchaser.

Sec. 202. STATE NETWORK PRIVATIZATION BOARD

CREATED == DUTIES.

1. A state network privatization board is created. The board shall consist of the following members:

a. A chairperson member appointed by the legislative council, subject to confirmation by the senate.

b. A member, who shall not be of the same political party as the chairperson, appointed by the governor subject to confirmation by the senate.

c. The adjutant general or the adjutant general's designee.

2. The board shall do all of the following:

a. Issue a request for proposals from qualified entities interested in serving as the manager of the network. This request for proposals shall be issued by July 1, 2004, and responses to the request for proposals shall be due by August 1, 2004.

b. Select a manager and enter into a management contract with the manager by October 1, 2004. The management contract shall provide for the continuation of all services currently being provided to state and 1 federal agencies and military installations pursuant 2 to chapter 8D, at the rates specified therein, for the 3 duration of the contract. The contract shall also 4 specify the manager's authority in relation to the 5 duties of the commission during the period between 6 execution of the management contract and closing of 7 the sale of the network. The commission shall 8 establish a dispute resolution process regarding rate 9 increases, quality of service issues, and other areas 10 of dispute involving network subscribers. The 11 commission shall also make recommendations regarding 12 imposition of an ongoing dispute resolution and 13 appeals process commencing with the closing of the 14 sale of the network.

c. Issue a request for proposals from qualified entities for the purchase of the network. This request for proposals shall be issued by January 1, 2005, and responses to the request for proposals shall be due by May 1, 2005.

d. Utilizing the criteria set forth in sections 203 and 204 of this Act, select a purchaser and enter into a sales contract with the purchaser by October 1, 2005.

e. Immediately upon execution of the management contract and the sales contract by the majority of the board, transmit the executed contract to the general assembly and to the governor. The board shall have full authority to enter into the management contract and the sales contract on behalf of the state, provided that the general assembly by legislation enacted regarding the specific purchase and approved by the governor, within thirty days after transmittal to the general assembly and the governor in the case of the management contract, and within sixty days after transmittal to the general assembly and the governor in the case of the sales contract, may disapprove the board's action, in which case the disapproved contract shall have no force and effect. In the event of such disapproval, the state shall pay the manager or the purchaser, as the case may be, reasonable out-of-pocket expenses incurred in preparing a proposal and performing prior to disapproval, but such expenses shall not exceed two hundred thousand dollars in the case of disapproval of the management contract and five hundred thousand dollars in the case of disapproval of the sales contract. In the event that multiple management contracts or sales contracts have been executed, the two hundred thousand dollars and five hundred thousand dollars shall be distributed pro rata among all 1 management contracts and sales contracts executed.

f. Cause the sales contract to require closing by October 1, 2007, allowing time for the state to obtain third-party approvals as required by section 206 of this Act, including the filing of any necessary

4 6 eminent domain actions, and for the purchaser to
4 7 secure financing.

4 8 g. Execute all necessary documents relating to the
4 9 closing of the sale of the network. The board may
4 10 direct any other applicable official to assist in the
4 11 execution of necessary documents relating to the
4 12 closing.

4 13 h. Require by written directive that all state
4 14 officials provide information and records concerning
4 15 the network to the board, to the manager, or to a
4 16 person submitting a proposal to purchase the network,
4 17 whenever the board requires such provision of such
4 18 records and other information.

4 19 i. Take all other steps necessary and proper as
4 20 needed to carry out its responsibilities enumerated in
4 21 this subsection. The board may adopt necessary rules
4 22 pursuant to chapter 17A to administer this division of
4 23 this Act.

4 24 Sec. 203. MINIMUM QUALIFICATIONS OF PURCHASER.

4 25 The purchaser shall meet the following requirements:

4 26 1. The principal place of business of the
4 27 purchaser and any parent of the purchaser shall be
4 28 located in the state of Iowa.

4 29 2. For national security reasons, and because of
4 30 the extensive military use of the network, the
4 31 purchaser shall possess national security approval.

4 32 Sec. 204. CRITERIA FOR SELECTION OF PURCHASER.

4 33 After issuing a request for proposals for the purchase
4 34 of the network and considering the proposals received,
4 35 the board shall select the highest and best offer for
4 36 purchase of the network from those persons submitting
4 37 proposals which meet all of the following criteria:

4 38 1. Satisfy the minimum qualifications of this
4 39 division of this Act.

4 40 2. Submit a proposal in compliance with the
4 41 request for proposals.

4 42 3. Demonstrate a likelihood of being able to
4 43 obtain any financing necessary to close the
4 44 transaction. However, the board shall not require
4 45 that the purchaser have a commitment for financing to
4 46 award the contract, but shall allow the purchaser at
4 47 least one year to obtain any necessary financing. The
4 48 board may also in its discretion consider proposals
4 49 involving financing of the sale by the state.

4 50 4. Agree to continue all services currently being
5 1 provided to state and federal agencies and military
5 2 installations for the next ten years, with any annual
5 3 rate increase not to exceed five percent per year,
5 4 provided that the purchaser shall not be required to
5 5 supply at such restricted prices a quantity or quality
5 6 of service greater than that provided by the network
5 7 as of execution of the contract for sale of the
5 8 network.

5 9 Sec. 205. CLOSING OF SALE. Any debt of the state
5 10 related to the network or other liens against network
5 11 assets shall be discharged out of the state's proceeds
5 12 of closing, so that the purchaser receives marketable
5 13 title to the network. The purchaser shall receive
5 14 bills of sale, in the case of personal property, and
5 15 deeds, in the case of real property, transferring all
5 16 network assets to the purchaser. The state shall also
5 17 transfer its interest in right-of-way and leases and
5 18 easements for uses of rights-of-way.

5 19 Sec. 206. THIRD-PARTY APPROVALS.

5 20 1. The state shall exercise all reasonable efforts
5 21 to obtain each required third-party approval,
5 22 including where necessary by use of eminent domain
5 23 proceedings. To the extent feasible, the state may
5 24 pay the costs of obtaining required third-party
5 25 approvals out of the proceeds of sale rather than from
5 26 the general fund of the state. In the event the state
5 27 fails to obtain a required third-party approval, the
5 28 purchaser may terminate the sales contract without
5 29 penalty and shall be reimbursed by the state for
5 30 reasonable out-of-pocket expenses incurred in
5 31 preparing its proposal and fulfilling its obligations
5 32 under the sales contract, not to exceed two million
5 33 dollars.

5 34 2. The board and the purchaser shall develop a
5 35 list of required third-party approvals and persons who
5 36 may have claims that would constitute required third=

5 37 party approvals if valid. The board shall mail to
5 38 each person on the list at their last known address a
5 39 notice that provides a description of the sale and
5 40 invites the recipient to submit a claim on a form
5 41 developed by the board by a deadline set by the board.
5 42 The claim or interest of any person who fails to
5 43 timely file a claim shall be deemed discharged and
5 44 forfeited, and such person shall be forever barred and
5 45 estopped from taking any action against the state or
5 46 purchaser that would in any way interfere with the
5 47 purchaser's use of the network. In addition, the
5 48 board shall publish the notice in newspapers of
5 49 general circulation in the state of Iowa, and failure
5 50 to file a timely claim shall bar all persons whose
6 1 rights could constitutionally be affected by such
6 2 notice, just as if such person had been mailed notice.
6 3 3. Any eminent domain or other proceeding to
6 4 obtain a required third-party approval shall be
6 5 promptly filed by the attorney general at the request
6 6 of the board and shall be added to the calendar of any
6 7 trial or appellate court of this state so that the
6 8 deadline in section 202 of this Act for closing the
6 9 sale can be met.
6 10 Sec. 207. REMOVAL OF RESTRICTIONS == REPEAL OF
6 11 CHAPTER 8D. Chapter 8D is repealed, effective as of
6 12 the date of the closing of the sale of the network
6 13 under this division of this Act, as certified by the
6 14 chairperson of the board to the governor.
6 15 Sec. 208. ASSISTANCE OF OTHER STATE AGENCIES.
6 16 1. The attorney general shall provide legal advice
6 17 to the board.
6 18 2. All other state agencies shall provide whatever
6 19 assistance may reasonably be required by the board in
6 20 carrying out its duties under this division of this
6 21 Act.>
6 22 #2. By renumbering as necessary.
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6 26 _____
6 27 DIX of Butler
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6 30 _____
6 31 JENKINS of Black Hawk
6 32 HF 700.707 80
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